

ORIGINAL

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

UNITED TRANSPORTATION UNION,  
ILLINOIS STATE LEGISLATIVE BOARD

Petition for rulemaking to require safe walkways  
for railroad employees in the state

T03-0015

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FEB 5 2004

Illinois Commerce Commission  
RAIL SAFETY SECTION

**JOINT OPPOSITION TO ISSUANCE OF SUBPOENA DUCES TECUM REQUESTED  
BY THE UNITED TRANSPORTATION UNION, OR IN THE ALTERNATIVE, JOINT  
MOTION TO QUASH THE SUBPOENA DUCES TECUM REQUESTED BY THE  
UNITED TRANSPORTATION UNION**

Norfolk Southern Railway Company and Illinois Central Railroad Company, et al.

(jointly, "Respondents") hereby oppose the issuance of the subpoena duces tecum filed by the United Transportation Union on January 29, 2004, or, in the alternative, move to quash the issuance of the subpoena. In support of this opposition and motion, Respondents state as follows:

1. The United Transportation Union ("Petitioner") initiated this action on February 18, 2003, by filing a petition for rulemaking. The Petitioner sought a rule from the Illinois Commerce Commission regulating walkways in railyards.
2. On October 2, 2003, Administrative Law Judge June B. Tate took evidence at the Illinois Commerce Commission. Petitioner actively participated in the hearing, including the presentation of one witness.
3. At the close of the October 2, 2003 hearing, Judge Tate asked if any parties had additions to make to the official record. Transcript of Hearing Before the Illinois

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Commerce Commission, Oct. 2, 2003 p. 258 (herein "Hearing Tr."). Respondents tendered exhibits for the formal record. *Id.* pp. 258-59. After the submission of this evidence, Judge Tate again asked if there was anything else to add to the record. *Id.* p. 260. Petitioner never indicated there was anything additional to add to the record, nor any desire to hold the record open. *Id.* Judge Tate then officially closed the record. *Id.*

4. More than three months after the close of the record, Judge Tate issued a Proposed Order on January 7, 2004. The Proposed Order suggested that the Commission reject the petition, largely finding Respondents' evidence more persuasive than that offered by Petitioner.

5. On January 29, 2004, Petitioner filed an application for subpoena duces tecum, seeking information from Norfolk Southern Railway Company regarding an incident that occurred on January 16, 2004, in which a Norfolk Southern employee died in a railyard.

6. The Illinois Administrative Code specifically states that a Hearing Officer may quash a subpoena duces tecum "for good cause shown, including, without limitation a showing that the subpoena is unreasonable or oppressive or *relates to irrelevant or immaterial matters.*" Ill. Admin. Code. § 200.390 (emphasis added).

7. Petitioner's subpoena duces tecum relates to matters that are obviously irrelevant. Petitioner seeks material related to an incident that occurred more than three months *after* the close of the record in this matter. By definition, matters outside of a closed record are irrelevant to the consideration of a petition.

WHEREFORE, Respondents oppose the issuance of any subpoena duces tecum and respectfully request that any subpoena duces tecum issued to the United Transportation Union be quashed.

Dated: February 4, 2004

Respectfully submitted,

Norfolk Southern Railway Company

By: Stephen C. Carlson  
One of its Attorneys

*by DPT by permission*

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Stephen C. Carlson, an attorney, certify that I caused a copy of the attached JOINT OPPOSITION TO ISSUANCE OF SUBPOENA DUCES TECUM REQUESTED BY THE UNITED TRANSPORTATION UNION, OR IN THE ALTERNATIVE, JOINT MOTION TO QUASH THE SUBPOENA DUCES TECUM REQUESTED BY THE UNITED TRANSPORTATION UNION, to be served on each of the parties listed on the attached service list by messenger or United States mail this 4<sup>th</sup> day of February, 2004.

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**SERVICE LIST**

**BY MESSENGER**

**The Honorable June B. Tate**

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